

### **Remarks/Arguments**

#### **The Rejection of Claims 1, 2, 4, and 21-23 Under 35 U.S.C. 112, Second Paragraph**

The Examiner rejected Claims 1, 2, 4, and 21-23 under 35 U.S.C. 112, second paragraph.

#### **Claim 1**

The Examiner cited uncertainty as to which device is determined as having a functional impairment and as to the meaning of lines 7-9 in Claim 1. Applicants have amended the preamble of Claim 1 as follows: “where the electronic engine control unit (132) has a signal output connected to the transmission control unit (110), the signal output for transmitting signals to the transmission control unit (110), and a signal transmission link connected to the transmission control unit (110), the link for receiving signals from the transmission control unit (110), comprising:” The amendment eliminates any reference to functionality in the preamble and also addresses the Examiner’s concern regarding lines 7-9.

The remainder of Claim 1 recites: “determining, using the electronic engine control unit (132) and the signals received or transmitted by the electronic engine control unit (132), whether there is a functional impairment in the torque transmission device (114, 116) or, the actuation device (106), or the electronic transmission control unit (110);” The invention can determine an impairment in any of the devices or units recited in the above limitations. That is, the ability to detect an impairment in any one of the devices or units does not preclude the ability to detect an impairment in the remaining devices or units.

The Examiner also cited lines 17-19 of Claim 1. Applicants have amended Claim 1 to recite: “and limiting, using the electronic engine control unit (132), the maximum permissible engine torque of the combustion engine when the electronic engine control unit (132) has determined a functional impairment in the torque transmission device (114, 116) or, the actuation device (106), or the electronic transmission control unit (110).” The amendment addresses the Examiner’s concern regarding the location of the impairment.

Applicants also have amended Claim 1 to correct the antecedent basis problems noted on lines 16 and 18.

## **Claim 2**

Applicants have amended the claim to address the antecedent basis problems.

## **Claim 23**

Applicants have amended the claim to remove the reference to “the driving end,” recitation of which is not necessary for understanding of the claim.

Applicants have amended the claim to address the antecedent basis problems cited by the Examiner.

Regarding lines 18-20, Applicants have added text, supported by page 20, lines 11-16 of the instant application, which clarify the limitations.

Applicants courteously request that the rejection be removed.

## **The Rejection of Claims 3 and 5 Under 35 U.S.C. 102(b)**

The Examiner rejected Claims 3 and 5 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,216,938 (Yamaguchi).

Amended Claim 3 recites: “turning off the combustion engine (124) when it is determined that ~~there is no data or signal communication or that there is a functionally impaired data or signal communication between the electronic transmission control unit (110) and the electronic engine control unit (132),~~ or the electronic transmission control unit (110) is functionally impaired, or there is a functional impairment in the gearbox device (102, 106) or in the torque transmission device (114) and when it is ascertained that the brake (140) of motor vehicle (100) is actuated, or the vehicle speed is less than a predetermined speed limit, or the engine speed is less than a predetermined boundary, or the idle controller torque is greater than a predetermined boundary value, or the selection lever is neither in the park position nor in the neutral position.”

The Examiner cited Yamaguchi as teaching the above claim limitations. However, as shown *infra*, Yamaguchi operates a clutch or performs a gear shift in response to any failures detected, with the exception of a failure in a communication line. Only for a failure in a

communication line does Yamaguchi modify engine operation by modifying fuel supply to the engine. The Examiner cited the following excerpt from Yamaguchi:

Col. 11, line 19-col. 13, line 47:

“At first, in a step 171, the failure check is performed for the communication faculty between the engine control computer 5 and the transmission control computer 14...” (col. 12, lines 56-59)

“If the torque reduction request signal is transmitted, then in a step 175 it is judged whether the engine running speed N.sub.E exceeds 2500 RPM or not. If N.sub.E >2500 RPM in the above judgment is satisfied, then a fuel supply to all the cylinders (six cylinders) of engine 1 is stopped to reduce suddenly the engine output in a step 176.” (col. 13, lines 1-7)

Assuming *arguendo* that stopping fuel supply to an engine is analogous to turning off the engine, as shown in Figures 2 and 7, Yamaguchi teaches stopping the supply only for a communication line failure. Clutch and gear shift operations are used to address failures for all other devices.

Col. 16, line 6-col. 17, line 52.

As shown in Figure 11, Yamaguchi teaches clutch pressure operations and gear shifts to reduce engine output.

Figure 13 teaches a process similar to that of Figure 7, in which fuel supply to the engine is modified only for a failure in the communication line: “FIG. 13 is a flow chart illustrating the control of the subroutine for reducing the output power of the engine. This flow chart is similar to that shown in FIG. 7 of the first embodiment. At first, in a step 171, a *failure in the communication line* 21 between the engine control computer 5 and the transmission control computer 14 is detected in the same manner as that of the step 103 in FIG. 11....If N.sub.E is higher than 2500 RPM, then in a step 176 the fuel supply to all the six cylinders of the engine 1 is stopped to decrease the engine output abruptly.” (emphasis added) (col. 17, lines 14-31)

For all the reasons noted above, Yamaguchi fails to teach every element of Claim 3; therefore, Claim 3 is patentable over Yamaguchi. Claim 5, dependent from Claim 3, also is patentable over Yamaguchi.

Claim Allowance

The Examiner stated that Claims 2 and 4 would be allowable if the rejection of Claim 2 under 35 U.S.C. 112, second paragraph was addressed.

Applicants respectfully submit that amended Claim 2 is in compliance with 35 U.S.C. 112, second paragraph and courteously request that Claims 2 and 4 be allowed.

Conclusion

Applicant respectfully submits that all pending claims are now in condition for allowance, which action is courteously requested.

Respectfully submitted,

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